

**CUI/PRIV – DO NOT RELEASE**

**Programmatic Agreement  
Among**

**The Federal Energy Regulatory Commission,  
The Pennsylvania, West Virginia, Virginia and North Carolina State Historic  
Preservation Officers,  
The National Park Service  
And  
The U.S. Department of Agriculture, Forest Service  
For  
The Atlantic Coast Pipeline Project  
And  
The Supply Header Project  
Docket Nos. CP15-554-000 and  
CP15-555-000**

WHEREAS, the Federal Energy Regulatory Commission, (FERC), has issued a Certificate of Public Convenience and Necessity (October 13, 2017) for the Atlantic Coast Pipeline Project, Docket No. CP15-554-000 and the Supply Header Project (Projects), Docket No. CP15-555-000, located in the States of Pennsylvania, West Virginia, Virginia, and North Carolina under Section 7 of the Natural Gas Act (18 CFR 157) (15 USC 717); and

WHEREAS, the U.S. Department of Agriculture-Forest Service, (FS) as authorized by [REDACTED] is considering issuance of Special Use Permit for the George Washington National Forest and the Monongahela National Forest as authorized by [REDACTED] CFR [REDACTED]; and

WHEREAS the National Park Service (NPS), as authorized by [REDACTED] USC [REDACTED] is considering issuance of the Special Use Permit for the crossing of the Blue Ridge Parkway and the Appalachian National Scenic Trail as authorized by [REDACTED] CFR [REDACTED]; and

WHEREAS, the FERC has determined that construction of the Atlantic Coast Pipeline Project would have an effect on properties eligible for listing in the National Register of Historic Places (NRHP) and has consulted with the Pennsylvania, West Virginia, Virginia, and North Carolina State Historic Preservation Officers (SHPO), FS, and the Advisory Council on Historic Preservation (Council) pursuant to 36 CFR 800.14, regulations implementing Section 106 of the National Historic Preservation Act (36 CFR 800, 16 USC 470f, as amended); and

**Comment [GR1]:** To keep with the ACHPs language, it would seem that the two Projects should be called the “undertakings” rather than “Projects” and that language should be used throughout. If you check closely that is not what is happening in later sections.

**Comment [GR2]:** This is only addressing the pipeline and not the header. See comment above about how to correctly and consistently identify the Undertaking(s).

**Comment [GR3]:**

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WHEREAS, cultural resources surveys have been conducted for the majority of the Projects; however, not all identification and evaluation tasks have been completed; and

WHEREAS, unless otherwise defined in this Agreement, all terms are used in accordance with 36 CFR 800.16; and

WHEREAS, Atlantic Coast Pipeline, LLC (Atlantic) and Dominion Energy Transmission, Inc. (Dominion) and the FERC have documented consultations with Native American groups (15 federally recognized tribes and 11 non-federally recognized tribes) that may attach religious or cultural importance to properties in the area; and

WHEREAS, no human remains, funerary objects, sacred objects, or objects of cultural patrimony, as defined in the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001), are expected to be encountered during archaeological data recovery or construction, and any such discoveries encountered during construction shall be governed by an Unanticipated Discoveries Plan which has been reviewed by the SHPOs, interested Indian tribes, and the FERC; and

WHEREAS, pursuant to 36 CFR 800.6(a)(1)(iii) on December 14, 2016, the Council indicated that it would participate in the resolution of adverse effects; and

WHEREAS, Atlantic and Dominion whose Projects will affect historic properties, have been invited to participate in consultation and concur in this Agreement;

NOW, THEREFORE, the FERC, the Pennsylvania, West Virginia, Virginia, and North Carolina SHPOs, the NPS (for their lands) and the FS (for their lands) agree that the Projects shall be implemented in accordance with the following stipulations.

### **Stipulations**

The FERC shall ensure that the following measures are carried out.

#### **I. Standards**

A. All identification and evaluation studies and treatment plans will be carried out by or under the direct supervision of a cultural resources professional(s) who meet, at a minimum, the Secretary of the Interior's "Qualifications Standards" for Archeology (48 FR 44738-9, September 29, 1983).

B. All identification and evaluation studies, treatment plans and the resulting reports shall be consistent with the SHPO's state guidelines, the Secretary of the

**Comment [GR4]:** How have the consultations been documented and with which tribes. These should be identified by name. And, is there any thought to invite them as well as Dominion and Duke to be consulting parties and concur in this PA?

**Comment [GR5]:** Who else has been invited or been informed that they can ask to be concurring parties to the PA/

**Comment [GR6]:** Why is this only for Archaeology? There are certainly lots of buildings and structures in the APE.

**Comment [GR7]:** Better with each SHPO's state guidelines

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Interior's "Standards and Guidelines" (48 FR 44716-42, September 29, 1983), the Council's publication, "Treatment of Archaeological Properties," and the Office of Energy Projects' "Guidelines for Reporting on Cultural Resources Investigations for Natural Gas Projects" (July 2017).

C. Atlantic and Dominion, after consulting with the FERC, the SHPOs, the FS, and the NPS will curate all materials and records resulting from the implementation of identification and evaluation studies and treatment plans conducted for the Projects. Curation will be consistent with 36 CFR 79 "Curation of Federally-Owned and Administered Archeological Collections." After analysis and documentation, these materials will be deposited in a repository approved by the SHPOs unless the landowner will not relinquish control. Atlantic will provide written documentation to the FERC and the SHPOs that the landowner will not relinquish control through donation. In the event that the landowner will not relinquish control of materials, extra documentation (e.g., additional photography, more detailed measurements) may be requested.

D. Atlantic and Dominion have prepared plans, in consultation with the SHPOs, the FS, and the NPS, that have been approved by the FERC, and are filed with the FERC in these Dockets, that identify the procedures to be followed if human remains or unanticipated historic properties are discovered during identification or evaluation studies, data recovery, or construction. These plans were prepared in accordance with 36 CFR 800.13. The Native American Graves Protection and Repatriation Act (P.L. 101-601; 104.3048) applies for Federal and Tribal lands, and applicable state laws for state and private lands.

## II. Identification of Historic Properties

A. In consultation with the SHPOs, the FS, and the NPS, the FERC will identify and evaluate historic properties including traditional cultural properties, identified in terms of the NRHP criteria (36 CFR 60.4) within the Projects' area of potential effects which has been defined by the FERC. The FERC will base its decisions on eligibility and effect on documentation provided by Atlantic, Dominion, and other available information, which is acceptable to the FERC, the FS, the NPS, and the SHPOs.

Atlantic and Dominion shall submit documentation to the FERC, the FS, NPS, the SHPOs, and any tribes participating for concurrent review and comment. The SHPOs, FS, NPS, and any tribes participating will have 30 days from receipt to provide comments on the documentation to the FERC. Atlantic and Dominion will revise the documentation, as appropriate. If the SHPOs, FS, NPS, or tribes do not comment within 30 days, the FERC shall assume their concurrence.

**Comment [GR8]:** These plans should be provided in an appendix to the PA so that they are immediately available for reference and use. Should not have to go to the dockets to retrieve.

**Comment [GR9]:** The definition of the APE should be provided in this PA for easy use. Appendix or maps. Or, within this stipulation.

**Comment [GR10]:** All the more reason to name and have a list of concurring tribes.

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B. For those properties, that the FERC, the FS, the NPS, and the SHPOs agree do not meet the NRHP criteria, no further consideration will be required. Properties that the FERC and the SHPOs determine to be listed in or eligible for listing in the NRHP, and which the FERC and the SHPOs agree will be affected by the Project(s), will be treated in accordance with Stipulation III of this Agreement. If the FERC, FS, NPS, and the SHPO cannot agree on the eligibility of a property, the FERC shall seek a formal determination from the Keeper of the National Register, National Park Service, whose determination shall be final.

C. In consultation with the SHPOs, the FS, and the NPS and assisted by Atlantic and Dominion, the FERC will provide interested persons, including Indian tribes, as identified in 36 CFR 800.16 (m), an opportunity to provide their views to the FERC regarding the identification and evaluation of historic properties, and the treatment of affected historic properties. Upon request, the FERC shall ensure that relevant information on historic properties affected by the Projects is provided to interested persons, consistent with Section 304 of the NHPA and the FERC's regulations at 18 CFR 388.107.

Comment [GR11]: Only federally recognized?

D. Changes in construction rights-of-way/ancillary areas: If Atlantic or Dominion proposes to reroute a portion of the right-of-way or use ancillary areas not previously identified and surveyed, Atlantic or Dominion will survey the areas in accordance with Stipulation II.A of this Agreement. In cases where the areas to be used are paved or graded/graveled and would not involve ground disturbance, individual review by the SHPO would not be required. All changes to the construction right-of-way/ancillary areas would still require the review and approval of the FERC.

### **III. Treatment of Historic Properties**

In consultation with the FERC, FS, NPS, and the SHPO, and considering the comments of any interested persons, Atlantic and Dominion shall develop plans to take into account the effects of the Projects on historic properties.

#### A. Avoidance

Comment [GR12]: Do you mean no effect here as you combine minimize and mitigation under "Treatment Plans." Perhaps, it would be better to use the ACHP's terms of "No Effect," "No Adverse Effect," and "Adverse Effect" rather than terms used by the USACE.

1. Whenever feasible, avoidance shall be the preferred option. In consultation with the FERC, FS, NPS, and the SHPO, Atlantic and Dominion will identify means to avoid effects to historic properties. The FERC shall determine when and if avoidance is a prudent and feasible option. If avoidance is determined to be the preferred option, Atlantic and Dominion shall incorporate the avoidance measures into their project implementation plans.

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**B. Treatment Plans**

1. For those historic properties that the FERC determines cannot be avoided, Atlantic and Dominion will develop treatment plans to minimize or mitigate the effects, including visual effects for those properties where the viewshed is part of the historic significance, in consultation with the FERC, FS, NPS, and the SHPOs and taking into account any comments of any interested parties or Indian tribes.

2. Atlantic and Dominion shall submit the treatment plans to the FERC, FS, NPS, and the SHPOs for concurrent review and comment. Atlantic also shall submit the treatment plans for the Warminster Rural Historic District, the Seneca State Forest Historic District, the Rockfish Valley Rural Historic District and the Wilderness Farm to the landowners/parties which have expressed an interest. The SHPOs, FS, NPS, and any Indian tribes participating will have 30 days from receipt to provide comments on the treatment plans to the FERC. Atlantic and Dominion will revise the plans, as appropriate. If the SHPOs, FS, NPS, or Indian tribes do not comment within 30 days, the FERC shall assume their concurrence. Following the review process and the receipt of the FERC's approval, Atlantic and Dominion shall implement the treatment plans.

**C. Submission of Reports**

1. Atlantic and Dominion shall provide the FERC, FS, NPS, SHPOs, and any Indian tribes participating, with a management summary of the treatment implemented within 30 days after implementation of the plan.

2. Atlantic and Dominion shall submit all reports to the FERC, FS, NPS, the SHPOs, and any Indian tribes participating for review and comment. Atlantic and Dominion will revise the reports as appropriate. Reports documenting mitigation shall be submitted within one year after the implementation of the treatment plans. The SHPOs, FS, NPS, and Indian tribes will have 90 days from receipt to provide comments on the report to the FERC.

Atlantic and Dominion shall submit copies of all final reports to the FERC, the SHPOs, Indian tribes who have requested them, and other interested parties as identified by the FERC, FS, NPS, or the SHPOs.

**IV. Public Education**

Atlantic and Dominion shall make the results of the investigations available to a wide audience in the form of a website or other publications. The specifics of the public education program will be developed in consultation with the FERC, FS, NPS, SHPOs, and interested parties during the development of the treatment plans.

**Comment [GR13]:** Will these be specific to each property or done on a larger scale? Difficult to know as there is nothing about no adverse effect due to conditions. Mitigation and minimizing seem to be jumbled together.

**Comment [GR14]:** I'd like more specifics on this. Seems very vague with no way to measure.

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## **V. Public Objections**

At any time during the implementation of the measures stipulated in this Agreement, should an objection to any measure or its manner of implementation be raised by a member of the public, FERC shall take the objection into account and consult as needed with the objecting party, the SHPOs, or the Council to address the objection.

## **VI. Dispute Resolution**

Should any party to this Agreement object within 20 days to any actions carried out pursuant to this Agreement, the FERC shall consult with the objecting party to resolve the objection. If the FERC determines that the objection cannot be resolved, the FERC shall forward all documentation relevant to the dispute to the Council. Within 30 days after receipt of all pertinent documentation, the Council shall either:

- A. provide the FERC with recommendations, which the FERC shall take into account in reaching a final decision regarding the dispute; or
- B. notify the FERC that it will comment pursuant to 36 CFR 800.7(c)(1). Any Council comment provided in response to such a request will be taken into account by the FERC with reference to the subject of the dispute.

Any recommendation or comment provided by the Council will be understood to pertain only to the subject of the dispute. The FERC's responsibility to carry out all actions under this Agreement that are not subject of the dispute will remain unchanged.

## **VII. Construction Clearance**

For those segments of the Projects where the provisions of this Agreement have been met, the FERC, in consultation with the FS, NPS, and SHPOs may provide Atlantic and Dominion with notice to proceed with construction in a manner that will not foreclose the adoption of alternatives for any other portions of their Projects. In addition, construction shall not proceed on any portion of their Projects until the applicable provisions of the Agreement have been carried out for that portion.

**Comment [GR15]:** How is one to determine logical termini under this planning process?

## **VIII. Amendment**

Any party to this Agreement may propose to the FERC that it be amended, whereupon, the parties to this Agreement will consult to consider such amendment in accordance with 36 CFR 800.14.

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## **IX. Withdrawal and Termination**

A. Any party to this Agreement may terminate its participation by providing 30 days written notice to the other parties, provided that the parties will consult during the period prior to the termination to seek agreement on amendments or other actions that would avoid that party's withdrawal.

B. In the event that the FERC or the Council withdraws, the Agreement will be terminated and the FERC will comply with 36 CFR 800.3 through 800.7 for the Projects.

## **X. Failure to Carry Out the Terms of the Agreement**

In the event that FERC does not carry out the terms of this Agreement, the FERC shall comply with 36 CFR 800.3 through 800.7 with regard to individual actions covered by this Agreement.

## **XI. Scope of Agreement**

This Agreement is limited in scope to actions that will facilitate the construction of the Projects and related facilities and is entered into solely for that purpose.

This Agreement shall be null and void if the terms are not carried out within 10 years from the date of its execution, unless the signatories agree in writing to an extension for carrying out its terms.

Execution and implementation of this Agreement evidences that the FERC has satisfied its Section 106 responsibilities for all individual actions of the Atlantic Coast and Supply Header Pipeline Projects and that the FERC has afforded the Council an opportunity to comment on the Projects and their effects on historic properties.

Federal Energy Regulatory Commission

By: \_\_\_\_\_ Date:  
Title: Director, Division of Gas - Environment and Engineering

Comment [GR16]: What related facilities? Isn't this the first use of this term and what does it mean?

Comment [GR17]: Another inconsistency in use of Projects/Undertakings

Atlantic Coast Pipeline Project  
Supply Header Project

Docket Nos. CP15-554-000; CP15-554-001  
CP15-555-000

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Advisory Council on Historic Preservation

By \_\_\_\_\_ Date:  
Title:

West Virginia State Historic Preservation Officer

By: \_\_\_\_\_ Date:  
Title:

Pennsylvania State Historic Preservation Officer

By: \_\_\_\_\_ Date:  
Title:

Virginia State Historic Preservation Officer

By: \_\_\_\_\_ Date:  
Title:

North Carolina State Historic Preservation Officer

By: \_\_\_\_\_ Date:  
Title:

US Department of Agriculture—Forest Service

By: \_\_\_\_\_ Date:  
Title:

Atlantic Coast Pipeline Project  
Supply Header Project

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National Park Service

By: \_\_\_\_\_ Date:  
Title:

CONCUR:

Atlantic Coast Pipeline, LLC

By: \_\_\_\_\_ Date:  
Title:

Dominion Energy Transmission, Inc.

By: \_\_\_\_\_ Date:  
Title: